

STATE OF MICHIGAN
COURT OF APPEALS

HUGH J. THOMAS,

Plaintiff/Counterdefendant-
Appellant,

v

MARIA T. THOMAS,

Defendant/Counterplaintiff-
Appellee.

UNPUBLISHED

May 24, 2005

No. 253023

Monroe Circuit Court

LC No. 02-028201-DM

Before: Neff, P.J., and Owens and Fort Hood, JJ.

PER CURIAM.

Plaintiff appeals as of right a judgment of divorce. We affirm.

Plaintiff first argues that the amount and duration of alimony awarded by the trial court is inequitable. We disagree.

Whether to award spousal support is in the trial court's discretion, and we review the trial court's award for an abuse of discretion. On appeal, we review the trial court's findings of fact concerning spousal support for clear error. The findings are presumptively correct, and the burden is on the appellant to show clear error. A finding is clearly erroneous if we are left with a definite and firm conviction that a mistake has been made. If the trial court's findings are not clearly erroneous, we must then decide whether the dispositional ruling was fair and equitable in light of the facts. The trial court's decision regarding spousal support must be affirmed unless we are firmly convinced that it was inequitable. *Gates v Gates*, 256 Mich App 420, 432-433; 664 NW2d 231 (2003).

The award of alimony is in the trial court's discretion. *Gates, supra*, p 432. The plain language of MCL 552.13 permits a trial court to award spousal support that it determines to be "just and reasonable." Factors to be considered by the trial court in determining whether an award of spousal support is just and reasonable include: (1) the past relations and conduct of the parties, (2) the length of the marriage, (3) the abilities of the parties to work, (4) the source and amount of property awarded to the parties, (5) the parties' ages, (6) the abilities of the parties to pay alimony, (7) the present situation of the parties, (8) the needs of the parties, (9) the health of the parties, (10) the prior standard of living of the parties and whether either is responsible for

the support of others, (11) contributions of the parties to the joint estate, and (12) general principles of equity. *Gates, supra* at 435-436.

The trial court looked at the past relations and conduct of both parties and found that both parties had affairs and were unfaithful. The trial court looked at the length of the marriage, eighteen years. The trial court found that both parties were in good health and that they were "fairly" close in age. The trial court also found that both parties had the ability to work. Regarding ability to pay, the trial court found it appropriate to grant defendant's request for alimony because of the income disparity between the parties. Regarding the present situation of the parties, the trial court found that plaintiff earned significantly more money than defendant. The trial court also found that defendant contributed to the joint estate by working "very hard" and raising the children while plaintiff went to school. Regarding standard of living, the trial court found that defendant and the children were living in low income, less desirable housing, while defendant lived in an apartment.

The record reflects that the trial court carefully considered all the relevant factors when it made its determination regarding the amount and duration of spousal support. Further, the trial court's findings of fact are supported in the record and, therefore, are not clearly erroneous.

In addition, the alimony award is not inequitable. Defendant's expenses were significantly lower than plaintiff's because she lived in low-income housing. In fact, the trial court stated on the record that it was fashioning the alimony award to help defendant and the children move out of the low-income housing and allow defendant to attend school to achieve a higher income level. In addition, the trial court deferred plaintiff's payment of alimony until he paid the full obligation to the IRS. We conclude that the trial court's alimony award is neither inequitable nor unjust.

Defendant's second issue on appeal is that the trial court erroneously placed excessive weight on the concept of fault in awarding alimony. We disagree. The conduct of the parties during the marriage may be relevant to the trial court's consideration of alimony, but the trial court must consider all the relevant factors and not assign disproportionate weight to any one circumstance. *Sparks v Sparks*, 440 Mich 141, 158; 485 NW2d 893 (1992).

Plaintiff contends that the trial court placed too much emphasis or excessive weight on the concept of fault in determining the alimony award. While it is true that the trial court considered fault, the trial court considered many other factors in its alimony award determination. The trial court looked at the length of the marriage, eighteen years. The trial court noted the health and age of both parties and found that both parties were in good health and that they were "fairly" close in age. The trial court also found that both parties had the ability to work. Regarding ability to pay, the trial court found it appropriate to grant defendant's request for alimony because of the parties' income disparity. Regarding the present situation of the parties, the trial court found that plaintiff earned significantly more money than defendant. The trial court also considered defendant's contribution to the joint estate. Specifically, the court noted that defendant worked two jobs and took care of the children while plaintiff was in college earning an aeronautical degree.

The trial court stated that alimony was important to allow defendant to increase her earning potential by allowing her to attend school. Based on the above noted factors the trial court determined that alimony was appropriate in order to balance the income of the parties. In addition, the trial court specifically stated on the record that evaluating the past conduct of the parties was not assigning fault, as is done in child custody cases. The trial court used plaintiff's past conduct as a factor in deciding the alimony award, but did not give it excessive weight.

Plaintiff's third issue on appeal is that the trial court erred in failing to attribute an IRS obligation to defendant. We disagree. The goal in distributing marital assets in a divorce proceeding is to reach an equitable distribution of property in light of all the circumstances. *Gates, supra* at 423. The division need not be mathematically equal, but any significant departure from congruence must be clearly explained. *Id.*

Plaintiff accrued a \$15,000 debt with the IRS regarding income earned in 2002 and health insurance benefits paid. Both parties lived in the marital home during this time. Defendant filed taxes for 2002 and claimed both children as exemptions, despite the fact that the parties received joint legal and physical custody in November 2002. Although acknowledging that the tax filing could have been handled differently, the trial court found that plaintiff would be solely responsible for the tax payment. Given the trial court's concern with the disparity in the parties' incomes and the finding that defendant resided in low income housing with the children, the record supports the trial court's finding that plaintiff would be solely responsible for the IRS debt. Therefore, the trial court's finding is not clearly erroneous. *Id.* at 436. The trial court's view of the evidence is plausible, therefore, its findings of fact are presumptively correct. *Id.* at 432.

Further, there is no indication that the trial court's decision was inequitable. The trial court ruled that plaintiff would not be responsible for alimony payments to defendant until he finished paying the IRS obligation. This period was approximately nine months. The trial court stated that, "I have given him some basis otherwise alimony would be longer and start sooner, but I think that gives him a time to get rid of that." The trial court recognized the disparity in the parties' income and fashioned a decision accordingly. In fact, the trial court afforded plaintiff an opportunity to pay off tax obligations to the IRS before he began alimony payments. This was a fair and equitable ruling in light of the facts. *Id.* at 432-433.

Affirmed.

/s/ Janet T. Neff
/s/ Donald S. Owens
/s/ Karen M. Fort Hood